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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,926	12/16/2005	Lone Andersen	0114229/0556831	6586
26874 7590 02/11/2009 FROST BROWN TODD, LLC 2200 PNC CENTER 201 E. FIFTH STREET CINCINNATI, OH 45202				
EXAMINER DEES, NIKKI H				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
02/11/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@fbtlaw.com

Advisory Action
Before the Filing of an Appeal Brief

Application No. 10/528,926	Applicant(s) ANDERSEN ET AL.
Examiner Nikki H. Dees	Art Unit 1794

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-6,8,10-13 and 15-66.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Lien Tran/
Primary Examiner
Art Unit 1794

/Nikki H. Dees/
Examiner, Art Unit 1794

Continuation of 11, does NOT place the application in condition for allowance because:

Regarding the 102 rejection of claims 1-6, 8, 10-22, 26-29, 32-36, 38, 39, 41, 42, 46-51, 53-56, 61, and 63, Applicant argues that the examiner appears to be misunderstanding the Goldberg application (Remarks, p. 2). As the arguments presented by Applicants substantially repeat the arguments presented in the Remarks dated August 7, 2008, pp. 12-13, the previously presented rejection stands for the reasons of record.

Regarding the 103 rejection of claims 23-25, 30, 31, 37, 40, 43, 52, and 64-66 over Goldberg, Applicant argues (Remarks, p. 4) that Goldberg does not teach or suggest acceptable amounts of additional components to be used in the chewing gum. As stated in the Office Action mailed February 20, 2008, the components claimed are conventional chewing gum additives. One of ordinary skill would recognize that different gum base components may require different amounts of additives and would have been able to determine the appropriate amounts to use through no more than routine experimentation.

Regarding the 103 rejection of claims 44 and 45 over Goldberg in view of Liu, Applicant argues (Remarks, p. 5) that Goldberg provides no teaching, suggestion, or motivation to add substances other than flavorants to their composition and therefore it is not obvious to add the active ingredients as taught by Liu. In response, it is noted that the teachings of Goldberg and Liu are both directed to a chewing gum composition comprising additional components, including flavorings. If one of ordinary skill wished to include an active agent in a chewing gum product, the artisan would have looked to Liu to provide a formulation comprising an active agent. The instant claims are only to the inclusion of the active agent in the chewing gum product, not the resulting textural properties of the gum.

Regarding the 103 rejection of claims 54-62 over Goldberg in view of Meyers, Applicant argues (Remarks, p. 6), that Goldberg only generally describes a coated chewing gum product. The fact that Goldberg teaches that one "might" coat the chewing gum product renders obvious the coating of the chewing gum product. Further, Applicant is using conventional coating agents for their coating, the amounts of which could be determined to be suitable for a chewing gum product through no more than routine experimentation.